REMARKS

Claims 1-34 are currently pending in this Application. By the final office action of January 27, 2006, the Examiner has rejected Claims 1-34 on various grounds discussed below. The Applicant respectfully traverses these rejections. Reconsideration is requested.

Claim Rejections – 35 U.S.C. § 112

Claims 1 and 29 are rejected under 35 U.S.C. §112 as being indefinite for failing to particularly point out and distinctly claim the subject matter. Specifically, the Examiner notes that these claims include the term "customers" in the preamble and asserts that the limitation is ambiguous as to whether "customers" are being claimed by the Applicant.

The Applicant submits that one skilled in the art would without doubt recognize that "customers" are human beings, and that customers are not an element being claimed by the Applicant. One skilled in the art would clearly understand that the recitation of Customers in claims 1 and 29 defines the type of restaurant in which the method of claim 1 is practiced or in which the system of claim 29 is used. As a result, the Applicant submits that claims 1 and 29 meet the requirements of 35 U.S.C. § 112.

Claim Rejections – 35 U.S.C. § 103

Claims 1-34 were rejected under 35 U.S.C. §103(a) as being unpatentable over Alabaster, US Patent No. 6,553,386 in view of Lennon-Thompson, US Patent No. 4,950,164 and further in view of Namisniak, US Patent No. 5,335,509.

Since this rejection is generally addressed to all pending claims, to simplify the response Applicant will respond primarily by pointing out the limitations of Claim 1 that are neither taught nor suggested by the applied references.

The Examiner asserts that Alabaster discloses a diet system that incorporates a computer system that "provides the ability to create partial or full meals", citing col. 7, lines 8 plus.

Alabaster does not actually create any meals or display any actual food items with which a meal may be assembled. Alabaster only presents images, i.e. pictures, on a computer screen for teaching a patient how to select foods that fit the patient's dietary needs. Within the context of the present invention, the "meals" of Alabaster would more accurately be called menu items. Alabaster's meals are simply lists of food items that the patient may purchase to actually make a meal. As noted at col. 7, lines 21-22, "It can also help to create shopping lists that match dietary goals." Even with the shopping list, the patient must find the food items at a store by visually identifying the food items based on names on the shopping list. There is no label on the food items in the store that would associate the food items with the particular computer displayed meals. The last element of claim 1 requires that the food items being displayed each have a label including unique identifiers for each of the menu items in which the food item is included.

The Examiner asserts that Alabaster further allows "the user to select a test meal type, i.e., breakfast, lunch, dinner [etc.]" and in response to the meal selection, presents various food items selected with the particular meal selected (col. 7, lines 26 plus).

This section of Alabaster describes the "Phase 2. Visual Diet Training" which starts at col. 6, line 64. The user selects a meal only in the sense of selecting a type of meal selected from breakfast, lunch, or dinner. The user does not pick a particular meal or the food items making up the meal. The computer of Alabaster then displays a picture of a meal on a computer screen and the patient estimates the calories, fat, fiber, etc. content of the food shown in the picture. The computer does not contain any actual food items and cannot display, deliver or provide any actual food items or meals. It only provides pictures. Even the pictures of the food items are not provided with labels indicating individual meals, i.e. menu items, in which the food items are included.

The Examiner asserts that Alabaster's training screen and food group items (see Fig. 15) read on Applicant's menu items and label, respectively.

Each menu item of the present invention comprises a plurality of food items. The Fig. 15 training screen includes pictures of a plurality of individual food items, but not grouped into pictures of meals. The user selects a subset of these pictures of food items and the computer presents a picture of a complete meal according to the users selection. But the computer does not label the individual food items to indicate that they belong in particular preselected menu items. The computer then calculates the nutritional content of the meal selected by the user and advises as to whether it meets the dietary goals of the user. See col. 8, lines 45-57. Alabaster does not provide any

list, i.e. plurality, of menu items, each comprising a plurality of food items. Instead the user selects one meal at a time and the computer advises as to its content. As taught in the present application, when customers randomly select food items to create a meal, the results are often unsatisfactory.

Alabaster does not display any actual food items in any food item display containers. Alabaster therefore cannot provide a label of any kind on the containers that Alabaster does not provide. Alabaster does not provide menu items at all. To the extent that the user creates a menu item, Alabaster does not provide any identifier for the menu items selected by the user. The label of the present invention is associated with actual food item display containers, and includes all unique identifiers associated with each menu item in which the food item is included.

The Examiner asserts that Alabaster incorporates the use of color–coding to organize different characteristics associated with different food items (col 6, lines 8 plus).

It is true that Alabaster suggests color-coding to present dietary measurement categories "to enhance user understanding and retention." However, in the present invention color-coding is one of several disclosed coding schemes to provide a unique identifier for each single menu item. Alabaster does not teach any unique identifier for a single menu item or meal.

The Examiner asserts that although Alabaster fails to disclose the assignment of a particular color for food items associated with a particular meal, the use of color-coding to identify food items is well known in the art.

While color-coding has been used to identify or distinguish many different items, the Examiner has not provided support for his assertion that it is well known to color-code food items. Even if it is, since Alabaster does not teach providing a unique identifier for any menu item, Alabaster cannot teach providing a label containing of number of such nonexistent identifiers on the individual food items that are included in the menu items.

The Examiner asserts that Lennon teaches a diet system that incorporates sets of color-coded cards 10, 20, 30, and 40 associated with food items of a particular meal (see Abstract and Fig. 1), that each card set incorporates subsets 11-14, etc. and that it would have been obvious to incorporate a color-coded meal card sets taught by Lennon into the meal formulating system of Alabaster to provide an effective means of assisting a user to create a meal from separate food items.

Each card of Lennon may be considered to be a menu item in the context of the present invention. Each card includes a list of food items included in the meal identified by the card. See Figs. 3a, 3b, and 3c. However, each of the cards shown in Figs. 3a, 3b, and 3c is a Red card. This set of cards is identified by the color Red. The color red is therefore not a unique identifier for a single menu item, but is instead an identifier for a plurality of menu items. As shown in Fig. 1, the color Red may identify as many as 15 separate meals or menu items. Therefore neither Alabaster nor Lennon teaches

providing a unique identifier for each menu item and no combination of the two references could provide such a teaching. If all the food items on the red cards were displayed and marked with the color Red, a customer would not be able to use the Red label to assemble any one of the 15 meals. The customer would still have to read one selected card and select food items based on the food item names on the selected card.

The Examiner asserts: that although Alabaster discloses food icons [pictures] in lieu of color coded individual display containers, the use of such food identifying means is well known in the art; that Namisniak teaches food storage containers 14 that incorporate a colored identifier 22 that matches an identifier swatch 26; and that it would have been obvious to incorporate said containers 14 into the diet system of Alabaster to provide an effective means of assisting a user to associate different food items into a meal.

Namisniak teaches at col. 3, lines 23-25, that "each container prominently displays an identifier that matches one of the identifier swatches on the base unit." Each swatch identifies one food item in one container. Namisniak also teaches that use of only 4 to 6 different identifiers is preferred, even though it teaches 14 swatches in use at one time.

Namisniak therefore does not teach menu items comprising a plurality of food items. Namisniak is concerned only with identifying individual food items stored in a refrigerator. Namisniak therefore does not provide a unique identifier for any menu item.

Namisniak does not teach identifiers that are unique. Instead Namisniak teaches using 4 to 6 identifiers to identify 14 separate food items.

Namisniak does not teach labels on the food items that have multiple unique identifiers. Instead Namisniak makes it clear that each food item will have only one identifier.

The food containers of Namisniak would clearly be for enclosing and storing food items, not for displaying the food items.

Namisniak therefore does not teach or suggest any of the limitations of the claims.

Regarding claim 7, the Examiner asserts that the individual colored cards 11-14 of Lennon read on the Applicants' tags.

As discussed above, the colored cards of Lennon do not provide unique identifiers for each menu item. As shown in Fig. 1 of Lennon, the color Red is used to identify 15 different menu items and is clearly not unique to any one of the 15.

In view of these numerous substantial differences between the cited references and the independent claims 1, 24 and 29, the Applicant submits that the references neither teach nor suggest the invention as covered by these claims and that these claims are clearly patentable over the cited references. Since the remaining claims all depend from claims 1, 24 or 29, the Applicant submits that the dependent claims are also patentable over the cited references.

CONCLUSION

The Commissioner is hereby authorized to charge payment of any further fees associated with any of the foregoing papers submitted herewith, or to credit any overpayment thereof, to Deposit Account No. 50-1515, Conley Rose, P.C.

Applicant respectfully submits that the present application as amended is in condition for allowance. If the Examiner has any questions or comments or otherwise feels it would be helpful in expediting the application, he is encouraged to telephone the undersigned at (972) 731-2288.

Respectfully submitted,

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